

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sitab Khan @ Mangu & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.864/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 31-5-2003 in Special Case
No.2/2003 (37/2001) passed by Sh. Chandra Narain
Mathur, RHJS, Special Judge (NDPS Cases) Gangapur
City.

Date of Judgment:

January 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. M.P.Khandelwal for
Mr. Biri Singh Sinsinwar for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Sitab Khan @ Mangu and Kalu Ram, the appellants herein, were placed on trial before Learned Special Judge (NDPS Cases) Gangapur City, who convicted each of them under section 8/18 Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced them to undergo 12 years rigorous imprisonment and fine of Rs.1 lac in default to further suffer 3 years rigorous imprisonment.

2. As per prosecution story Madan Pal Singh, SI, Police Station GRP Gangapur City lodged a written report at Police station GRP Gangapur City on May 22, 2001 at 4.30 AM stating therein that on May 21, 2001 at 11 PM having received a secret information that two persons were travelling in general coach of Dehradun Express under suspicious circumstances, he

took search of both suspected persons and found a polythene bag containing 4 kg. opium, out of which two samples of 30 gm. were taken. Necessary memos of recovery were drawn, the appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge (NDPS Cases) Gangapur City. Charge under section 8/18 NDPS Act was framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. The only contention of learned counsel for the appellant is that there are serious infirmities in the prosecution case. From the evidence available on record it has not been established beyond reasonable doubt that the sample of opium sent to FSL was the same which was taken at the time of search. My attention was drawn to seizure memo (Ex.P-1) that reads as under:-

"अफीम का वजन मय बारदाना किया गया तो वजन 4 किलोग्राम हुआ इसमे से 30-30 ग्राम के दो सैम्पल निकाल कर सिगरेट के खाली पैकेट मे रखकर सफेद कपड़ों में सीकर सीलबंद चिटबंद किये गये सैम्पलों को मार्क A1 व A2 दिया गया।"

4. In the FSL report (Ex.P-14) however the description of articles was given as under:-

"It contained dark brown coloured semisolid sticky substance having characteristics smell packed in a polythene bag which was repacked in another polythene bag altogether packed in a cigarette case. The substance weighed 30.0 gms along with a polythene bag."

5. Having closely scanned the aforequoted documents I notice that in the seizure memo Ex.P-1 samples of opium were not packed in a polythene bag whereas the samples which were sent to FSL were packed in a polythene bag, which was repacked in another polythene bag. This serious infirmity raises a question as to whether the samples of contraband sent to the FSL were the same which were taken at the time of search and seizure. This infirmity creates doubt and smashes the substratum of the prosecution story. Since the charge under section 8/18 NDPS Act has not been established beyond reasonable doubt, the finding of conviction of the appellants deserve to be set aside.

6. In Ram Swaroop Vs. State of Rajasthan [2004(2) RCC 945] where the prosecution failed to establish that the sample of contraband sent to FSL was the same which was taken at the time of search and seizure, benefit of doubt was given to the accused.

7. For these reasons, I allow the appeal and set aside conviction and sentence awarded to the appellants Sitab Khan @ Mangu and Kalu Ram and acquit them of the charge under section 8/18 NDPS Act. The appellants Sitab Khan @ Mangu and Kalu, who are in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

The impugned judgment of learned trial court stands set aside as indicated above.

(Shiv Kumar Sharma)J.

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